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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|------------------------|---|-----------------------------|
| 10/570,226 | 11/01/2006 | Alastair Edwin McAuley | 1171/44578/166-PCT-US | 7568 |
| 279 | 7590 | 07/08/2010 | | |
| CLARK HILL PLC 150 NORTH MICHIGAN AVENUE SUITE 2700 CHICAGO, IL 60601 | | | EXAMINER BLIZZARD, CHRISTOPHER JAMES | |
| | | | ART UNIT 3771 | PAPER NUMBER |
| | | | NOTIFICATION DATE 07/08/2010 | DELIVERY MODE ELECTRONIC |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mkitz@clarkhill.com

| | | | |
|------------------------------|---|---------------------------------------|--|
| Office Action Summary | Application No. 10/570,226 | Applicant(s) MCAULEY ET AL. | |
| | Examiner CHRISTOPHER BLIZZARD | Art Unit 3771 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6 and 8-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6 and 8-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/04/10 has been entered.

2. As directed claims 1, 10 and 12 have been amended, claims 2, 5, 7 and 13-17 have been cancelled, and no new claims were added. Therefore this application has claims 1, 3, 4, 6, and 8-12 pending.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 3, 4, 6, and 8-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Gunaratnam (7,066,178).

5. Regarding claims 1,3, and 10-12, Gunaratnam discloses a CPAP device for delivering a supply of gases to a user (column 1, lines 13-17) comprising a mask (100)

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(fig. 8) in fluid communication with the supply of pressurized gas (column 3, lines 1-3), an outlet member in the form of a cover (114) detachably connected to the mask (column 7, lines 36-37) that forms a outlet vent, wherein the outlet vent is formed by a slot (110) between the mask and the cover (114), such that the separation between the mask and the cover increase to the edge of the cover (fig. 8) in order for exhaled air to be diffused (column 7, lines 45-48).

6. Regarding claim 4, Gunaratnam discloses the outlet vent being a substantially long tapered slot (fig. 8).

7. Regarding claim 6, Gunaratnam discloses the outlet vent extending between the top and bottom of the mask (fig. 8).

8. Regarding claim 8 and 9, Gunaratnam discloses the mask being nasal mask or a full face mask (column 5, lines 15-19).

Response to Arguments

9. Applicant's arguments filed 5/4/10 have been fully considered but they are not persuasive. Applicant's argument that Gunaratnam does not disclose that the separation between the mask and the cover increases to the edge of the cover but instead discloses that the separation decreases is not persuasive because the cover has multiple edges, therefore if the separation decreases from one edge to another then it must also increase in the opposite direction. Applicant's argument that the separation of the mask of Gunaratnam would not diffuse the exhaled gas is not persuasive because any exhaust port that emits exhaust gases into the atmosphere would be considered to diffuse the exhaled gas because diffusion is an inherent property of gases.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER BLIZZARD whose telephone number is (571)270-7138. The examiner can normally be reached on Monday-Friday, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571)272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher Blizzard /
Examiner, Art Unit 3771
/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761